Federal Court  Cour fédérale

Date: 20221208

Docket: IMM-7776-21

Citation: 2022 FC 1697

Ottawa, Ontario, December 8, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MARIUS SKENDERAJ

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preliminary Matters

[1] The style of cause is changed to show the Respondent as the Minister of Citizenship and Immigration, effective immediately.

[2] By Order dated December 8, 2022, I granted a motion brought by the Applicant's solicitor of record seeking to be removed from the record pursuant to Rule 125 of the *Federal*

Courts Rules, SOR/98-106 [*Rules*] because he had lost all contact with the Applicant including by email and telephone as a result of which he cannot receive instructions.

[3] Having granted the motion, I have proceeded to determine this application based on the written materials. In doing so, I note that Rule 38 permits the Court to proceed in the absence of a party if the Court is satisfied that notice of the hearing was given to that party in accordance with the *Rules*. I am satisfied that this requirement is met, as the Order dated July 28, 2022 granting leave in this matter and setting the hearing date was sent to the Applicant's then solicitor of record, which represents effective service upon the Applicant and therefore notice in accordance with the *Rules*.

II. **Overview**

[4] The Applicant, who did not appear in person, is a citizen of Albania. He seeks judicial review of a negative Pre Removal Risk Assessment (PRRA) decision made on August 31, 2021 (the Decision) by a Senior Immigration Officer.

[5] The PRRA Officer found that the Applicant is neither a Convention refugee nor a person in need of protection.

[6] For the reasons that follow, this application is granted. The Decision is quashed, as there is no point in returning the matter for redetermination given the Applicant is "in the wind" and the Court was advised that his former solicitor believes he may have left the country.

III. **Background Facts**

[7] The Applicant's mother is a police officer in Albania. In March 2015, she arrested a powerful organized crime figure known as Durim Bami ("Bami") and prevented him from exiting the country. Bami offered a bribe in exchange for his release. When she refused, he declared a blood feud against the Applicant's family.

[8] The Applicant alleges that in January 2016 a group of unidentified men affiliated with Bami attacked him. He ultimately fled Albania fearing ongoing retaliation and risk to his life. The Applicant travelled to Belgium and then the UK where he remained without immigration status for approximately three years. He arrived in Canada in September 2019 and initiated a claim for refugee protection. Having previously made and abandoned his claim in the UK, he was deemed ineligible to do so. He initiated a PRRA on December 3, 2019.

[9] The Officer convoked an oral PRRA hearing. The Officer refused the application on the basis that there was insufficient evidence to establish that the Applicant is a Convention refugee or a person in need of protection.

IV. **The Decision**

[10] The Officer accepted that the Applicant's mother detained Durim Bami and that the Applicant was attacked in Albania in January 2016. The Officer stated however, that there was insufficient evidence to determine on a balance of probabilities that the Applicant would be at risk from Durim Bami were he to return to Albania.

[11] Specifically, the Officer found that the Applicant had failed to establish a risk of persecution under sections 96 and 97 of the IRPA citing insufficient evidence to corroborate that:

a) the Applicant's mother was and continues to be threatened by Bami;

b) the physical assault on the Applicant in January 2016 was connected to Bami;

c) Bami declared a blood feud on the Applicant's family;

d) the Applicant is personally at risk.

V. **Issues and Standard of Review**

[12] Although the Applicant put forward a number of alleged errors with the Decision, the only issue is whether the Officer's decision was reasonable.

[13] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

VI. **Analysis**

[14] The determinative issue in this review is the Officer's findings with respect to the requirement for corroboration.

[15] The Applicant argues that the Officer's requirement for corroborative evidence was unreasonable in the absence of valid reasons to doubt the Applicant's truthfulness, citing Justice Lafreniere's decision in *Qosa v Canada (Citizenship and Immigration*), 2021 FC 565.

[16] The Respondent submits that the presumption of truth was rebutted in this case and valid reasons were provided by the Officer for requiring readily available, corroborative evidence.

[17] Though neither party cited it, the legal framework for the requirement of corroborative evidence was proposed by Justice Grammond at paragraph 36 of *Senadheerage v Canada (Minister of Citizenship and Immigration),* 2020 FC 968 [*Senadheerage*].

> To summarize, a decision-maker can only require corroborative evidence if:
>
> 1. The decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony or the fact that a large portion of the claim is based on hearsay;
>
> 2. The evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it.

[18] Justice Grammond also held that to safeguard against the possibility of corroboration becoming an open-ended requirement, the two-step framework ought not to be reversed. To do so would hollow out the presumption of truthfulness established by the FCA in *Maldonado v Minister of Employment and Immigration*, 1980 2 FC 302 at paragraph 5. The end result is that a decision-maker must always identify an independent ground for requiring corroboration, for example, if a large portion of the claim is based on hearsay: *Senadheerage* para 33.

[19] Applying the legal framework set out in *Senadheerage*, the Officer's findings on the requirement for corroboration do not withstand scrutiny.

[20] By way of example, the Officer questioned the Applicant about how he knew the January 2016 attack was connected to Bami. The Applicant stated that individuals in his village had relayed this information to him. When asked why he did not provide evidence from one of these individuals, the Applicant stated that they were afraid of Bami and as such would not want to provide written documents to support his application. The Officer rejected this explanation as not being credible and drew an adverse inference, stating that "it is not credible that individuals, one of whom is the applicant's cousin and another his mother, would be unwilling to provide supporting affidavits for a confidential immigration process. Especially in light of documents provided that were received directly from the applicant's mother's employer." The Officer failed to explain however, why corroboration was required and considered necessary in light of the Applicant's sworn testimony.

[21] The Officer also asked the Applicant why he failed to provide an affidavit from his mother attesting to the threats she received from Bami. The Applicant responded that he was not aware that one was required. The Officer then repeatedly noted in their reasons for Decision the absence of that affidavit, without ever explaining why such corroboration was required in the first place:

a) "I note that it has been approximately four months since the hearing and no affidavit has been received."

b) "The applicant does not provide an affidavit from his mother to support this statement."

c) "…I ascribe little weight to the applicant's explanation as to why he cannot produce affidavits."

d) "..the Applicant has not provided an affidavit from his mother relating to any of the events connected to the blood feud declaration described by the applicant."

[22] I find that the Officer engaged in the flawed reasoning that Justice Grammond warned against in *Senadheerage*: by focusing on the presumptive availability of corroborative evidence as a ground for requiring it, the Officer appears to have reversed the two-step approach outlined above. The Officer did not point to any contradictory statements in the Applicant's evidence. On the contrary, the Officer found that the Applicant testified in a "frank manner". I also note that the Applicant provided documentary evidence of the attack in January 2016 and evidence that his mother did detain Mr. Bami in March 2015, which the Officer accepted. I find as a result that the Decision provides insufficient justification for the conclusion given.

[23] Decision makers are owed greater deference on findings of fact and weighing of evidence: *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 11. The Officer's findings with respect to the requirement for corroboration in this case, do not follow the relevant legal principles and, in my view the reasons, "fail to reveal a rational chain of analysis:" *Vavilov*, at paragraph 103.

VII. **Conclusion**

[24] The application is granted for the foregoing reasons and the Decision is quashed. There is no point in returning the matter for redetermination as the Applicant's whereabouts are unknown.

[25] There is no serious question of general importance for certification on these facts.

JUDGMENT in IMM-7776-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is changed to show the Respondent as the Minister of Citizenship and Immigration.
2. The Application is allowed and the Decision is quashed.
3. There is no question for certification.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7776-21
STYLE OF CAUSE:	MARIUS SKENDERAJ v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 26, 2022
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	DECEMBER 8, 2022

APPEARANCES:

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